

LEGAL LENDING LIMIT ATTRIBUTION

OFI Advisory Opinion No. 3 October 1, 2001

Purpose

In order to facilitate the safe and sound operation of Louisiana state-chartered banks and savings banks, the Louisiana Banking Law, ("LBL"), LSA-R.S. 6:1 et seq., specifically LSA-R.S. 6:415, and the Louisiana Savings Bank Act of 1990, ("LSBA"), LSA-R.S. 6:1131 et seq., specifically, LSA-R.S. 6:1235, provide for limits on amounts that banks and savings banks may loan to any one borrower. In addition to providing direct lending limitations, sections 6:415 and 6:1235 also prescribe limits on indirect lending. This advisory opinion is to assist state-chartered banks and savings banks in determining whether a transaction is considered indirect lending and, therefore, combined with a person's direct debt for legal lending limit purposes under the LBL and LSBA.

Issue

When are loans or extensions of credit to one person attributed to other persons in determining the loan to one borrower limits under the LBL and the LSBA?

Analysis

It has long been the position of this office that the term "indirect lending" is most appropriately viewed on a case-by-case basis. However, over the course of time, a consistent framework for reviewing and determining whether certain transactions fit within this definition has been developed.

Historically, this office has maintained that indirect lending should be determined upon attribution pursuant to the liability laws of the state of Louisiana. In this context, indirect refers to an obligation arising either from an interposed party, such as a corporation or partnership, or from the status of the obligation which contains an endorsement or guarantee.

The following attribution rules are generally used by this office in ascertaining compliance with LSA-R.S. 6:415 and 1235.

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1. Guarantees or endorsements or co-signer relationships are attributed to the full extent of the amount guaranteed, endorsed, or co-signed.
2. Partners are attributed an equal portion of the partnership debt (virile share) in the absence of an express stipulation.
3. Limited partners (partners in commendam) are attributed the partnership debt to the extent of their agreed contribution to the partnership.
4. Shareholders are not attributed any corporate debt and members are not attributed any limited liability company debt, if no other circumstances require attribution, such as having made a personal guarantee or having substantial financial interdependence.
5. Spouses are assumed to be in community property unless proven otherwise and the whole of the debt is attributed to the other.
6. Children of the age of minority will have their debt attributed to their parents unless proven otherwise.

Additionally, loans or extensions of credit to one person will be attributed to other persons when the proceeds of the loans or extensions of credit are to be used for the direct benefit of the other person or persons, or a common enterprise is deemed to exist between the persons. Whether a direct benefit exists, or whether two or more persons are engaged in a common enterprise, will depend upon a realistic evaluation of the facts and circumstances of particular transactions. Where the expected source of repayment for each loan or extension of credit is the same for each person, a common enterprise will be deemed to exist and the loans or extensions of credit are combined.

Further, where loans or extensions of credit are made to persons who are related through common control, including where one person is controlled by another person, a common enterprise is deemed to exist if the persons are engaged in interdependent businesses or there is substantial financial interdependence among them.

Substantial financial interdependence is deemed to exist when fifty percent or more of one borrower's gross receipts or gross expenditures (on an annual basis) are derived from transactions with the other borrower. Gross receipts and expenditures include gross revenues/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

Conclusion

For legal lending limit purposes, loans or extensions of credit that can be attributed to other persons by any of the methods described above will be considered indirect borrowings by those individuals.

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